

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Periodic Reporting Rules

Docket No. RM2018-2

PUBLIC REPRESENTATIVE COMMENTS ON ADVANCE NOTICE OF PROPOSED
RULEMAKING TO REVISE PERIODIC REPORTING REQUIREMENTS

(March 7, 2018)

On December 27, 2017, the Postal Service requested that the Commission consider revisions to the periodic reporting rules codified in 39 CFR part 3050.¹ On January 5, 2018, the Commission issued an advance notice of proposed rulemaking and invited comment on the specific revisions requested in the Petition as well as “whether specific periodic reporting requirements should be eliminated or modified or whether updates or enhancements to the requirements should be made.”²

First, the Public Representative provides general comments. The Public Representative observes that the Commission must consider whether any proposed revisions will continue to provide the public with timely, adequate information to assess the lawfulness of rates charged and enable the Commission to fulfill its responsibilities. Consistent with these considerations, the Public Representative emphasizes that any potential revisions to part 3050 should continue to promote the public interest in and the general utility of periodic reporting.

¹ United States Postal Service Petition for Rulemaking on Periodic Reporting, December 27, 2017 (Petition).

² Order No. 4347, Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, January 5, 2018, at 3.

Second, the Public Representative addresses the specific requests made by the Postal Service. Generally, the Public Representative concludes that the proposed extensions of filing deadlines and changes to the form and content of two tables would not harm the public interest. The Public Representative discusses how the Commission might evaluate the Postal Service's general request to avoid unnecessary administrative effort and expense on the part of the Postal Service.

I. General comments

As observed by the Postal Service, the Commission has specific authority to promulgate rules related to the content and form of reports that the Postal Service must provide to the Commission under 39 U.S.C. § 3652. This statutory provision provides three guiding principles for the Commission to consider when prescribing these requirements: "(A) providing the public with timely, adequate information to assess the lawfulness of rates charged; (B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and (C) protecting the confidentiality of commercially sensitive information." 39 U.S.C. § 3652(e)(1). The Commission also has general authority to promulgate rules and regulations and establish procedures that the Commission "deem[s] necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under [Title 39 of the United States Code]." *Id.* § 503.

Consistent with these provisions, the periodic reporting requirements are critical to ensuring sufficient transparency as envisioned by the Postal Accountability and Enhancement Act (PAEA).³ The periodic reporting of financial information sheds light on the Postal Service's rate setting process and current financial condition. The periodic submission schedule enables the identification and evaluation of operating and financial trends as they unfold. The periodic reports are internally analyzed by the Commission and inform the Commission's work in several proceedings. Moreover,

³ Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006).

these reports aid the Commission in fulfilling its reporting responsibilities and issuing its Annual Compliance Determination (ACD). The Commission's analysis of the Postal Service's financial data was published in the ACD for FY 2007-FY 2012. To provide greater clarity and transparency regarding the Postal Service's financial data and trends, the Commission has published a separate Financial Analysis Report since FY 2013. Such transparency serves the public interest by promoting integrity and accountability on the part of the Postal Service. Any potential revisions to part 3050 should continue to provide adequate transparency to the public.

The transparency gained through periodic reporting also improves the ability of the public to meaningfully participate in Commission proceedings, particularly within the tight deadlines imposed by the PAEA and the Commission's rules. Generally, periodic reports are available to the public.⁴ For instance, members of the public may use periodic financial reports to gain necessary background on the Postal Service's finances and minimize delay caused by the need to issue discovery or file a motion for issuance of information requests in a pending proceeding. The periodic reporting rules inform the public concerning the timing and types of information that will be filed with the Commission routinely. The rules also inform the public how to participate in proceedings to improve financial data or analytical principles. 39 C.F.R. § 3050.11, .42.

In evaluating potential revisions to part 3050, it is important to ensure that the information provided through periodic reporting remains useful to the Commission and the public. The Public Representative notes the usefulness of maintaining periodic reporting requirements that remain relatively consistent over time. Data that is collected consistently enables trend analysis (for instance, over the course of several years). The Public Representative also observes that generally it is more useful to require data to be reported (and therefore, collected) at a granular level. More granular data improves the

⁴ The Public Representative observes that 39 C.F.R. part 3007 provides procedures concerning the treatment of non-public information provided by the Postal Service and 39 C.F.R. 3004.30(d) contains the procedure applicable to Freedom of Information Act requests for materials designated as non-public by the Postal Service.

meaningfulness of the analysis because it allows for a multi-faceted view of the data. By contrast, aggregated data can mask important trends that may be apparent at a more granular level (for instance, annual data does not reveal seasonal trends that are evident in monthly or quarterly data). Having rules in place that require the routine collection and reporting of granular data over several years is superior to piecing together data through requests and responses after the fact on an *ad hoc* basis.

Consistent with these principles, part 3050 sets forth:

- General provisions applicable to all types of periodic reporting (§§ 3050.1-.3);
- Requirements for the use of accepted analytical principles and the conduct of proceedings to propose a change to accepted analytical principles (§§ 3050.10-.11, .43(c));
- Content and format requirements for the annual compliance report provided by the Postal Service to the Commission in accordance with 39 U.S.C. § 3652 (§§ 3050.13-.14, .20-24);
- Content and form requirements for financial reports due each year, quarter, month, or pay period and the statutory basis for the conduct of proceedings to improve financial data (§§ 3050.25, .28, .35, .40-.42); and
- Content and form requirements for other reports due each year (§§ 3050.12, .26-.27, .30, .43, .60).

Generally, the rules in part 3050 enable the Commission to carry out its duties and serve the public interest. Any potential revisions to part 3050 should remain consistent with these guiding principles.

II. Specific responses to the Petition

A. Proposed extensions to filing deadlines

The Postal Service requests the following extensions to filing deadlines:

- 9 extra days for the monthly National Consolidated Trial Balance (“NCTB”) and Revenue and Expense Summary (“RES”) reports for January, February, April, May, July, August, October, and November;

- 10 extra days for the Revenue, Pieces, and Weight (“RPW”) reports and Quarterly Statistics Report (“QSR”) for fiscal quarters 1, 2, and 3;
- 20 extra days for the Billing Determinants reports for fiscal quarters 1, 2, and 3;
- 25 extra days for the NCTB and RES reports for December, March, and June;
- 30 extra days for the RPW report and QSR for fiscal quarter 4;
- Date of filing the Form 10-K⁵ for the NCTB and RES reports for September; and
- 50 extra days for the Billing Determinants report for fiscal quarter 4.

Petition at 2, 4-6. The Petition also requests to combine the filing of the Billing Determinants for fiscal quarter 4 with the filing of the annual Billing Determinants. *Id.* at 4.

Generally, the extended deadlines proposed by the Postal Service appear to align with other financial reporting deadlines. The Public Representative supports any proposed extensions that would reduce administrative expense or effort expended by the Postal Service, so long as the proposed extensions do not disrupt the Commission’s or the public’s need for this information on a timely basis. These proposed filing deadlines appear consistent with past practice.

The Public Representative suggests updating 39 C.F.R. § 3050.28(b) to more precisely reflect past practice. The filing deadline for the Monthly Summary Financial Reports for the last month of each quarter (March, June, September, and December) is tied to the filing of the “Form 10-Q report.” § 3050.28(b). No Form 10-Q is filed for the fourth fiscal quarter, which ends September 30. The Postal Service interprets the filing deadline for the September Monthly Financial Summary Report as the date of filing the Form 10-K. See Petition at 5-6. If the Commission accepts the date of filing the Form

⁵ The existing filing deadline for the NCTB and RES reports for September is 15 days after the end of the month (October 15). 39 C.F.R. § 3050.28(a) and (c). The filing deadline for the Form 10-K is 60 days after the end of the fiscal year (November 29). 39 U.S.C. § 3654(a)(1)(B); 39 C.F.R. § 3050.40(a)(2). In practice, the Postal Service has filed the Form 10-K early—usually within 45 days after the end of the fiscal year (November 15). Petition at 2, n. 5. If this practice continues, the Petition would effectively produce a filing deadline for the September NCTB and RES reports that is usually 30 days after (but no later than 45 days after) the existing deadline.

10-K as the filing deadline for the September Monthly Financial Summary Report, § 3050.28(b) should be updated accordingly to refer to “Form 10-Q or 10-K report (whichever is applicable).”

B. Proposed Revisions to Tables 1 and 2

The Postal Service asserts that revising the form and contents of Tables 1 and 2 would improve consistency with quarterly and annual financial reporting. Petition at 1. The Postal Service requests to modify the revenue reporting required by Table 1, which presently breaks down “Total Operating Revenue” into “Mail Services Revenue” and “Government Appropriations” to a breakdown of “Total Revenue” into “Operating Revenue” and “Other Revenue.” *Id.* at 7-8. The Postal Service also requests to modify Table 2’s reporting of revenue for “Total All Mail” to reflect “Total Operating Revenue.” *Id.* at 8. The Postal Service further requests to change Table 2’s line item listing “Standard Mail” to “USPS Marketing Mail.” *Id.*

The Public Representative does not object to these proposed revisions. Updating Table 2’s line item listing “Standard Mail” to “USPS Marketing Mail” reflects the Postal Service’s decision to change the name of the class. The other proposed revisions should better align the preliminary financial information reported in Tables 1 and 2 on a monthly basis with the Postal Service’s reporting in its Forms 10-Q and 10-K. Moreover, adequate transparency remains because, as explained below, the specific information at issue remains publicly available.

Table 1’s “Government Appropriations” monthly line item refers to the actual amounts incurred by the Postal Service to provide free and reduced mail.⁶ This information is publicly available in the Trial Balance report filed on a monthly basis and

⁶ United States Postal Service, 2017 Report on Form 10-K, November 14, 2017, at 69-70.

in the applicable Forms 10-Q and 10-K filed on a quarterly and annual basis.⁷

Therefore, eliminating this line item from Table 1 does not harm the public interest.

Similarly, excluding monthly investment and interest income from Table 2's revenue reporting does not harm the public interest because monthly investment and interest income would be included in the Table 1's proposed "Other Revenue" reporting. Petition at 8. Moreover, investment and interest income remains publicly available in the RES report filed on a monthly basis and in the applicable Forms 10-Q and 10-K filed on a quarterly and annual basis.⁸

C. General request to avoid unnecessary or unwarranted administrative effort or expense

The Postal Service urges the Commission to consider updating its rules to eliminate or modify the scope of the required reports "to avoid imposing 'unnecessary or unwarranted administrative effort and expense' on the Postal Service, while still enabling the Commission to carry out its oversight responsibilities." Petition at 9-10. It is difficult to evaluate this request in the abstract. The Petition does not identify any rules in 39 C.F.R. part 3050 that require the Postal Service to report content that is asserted to be "unnecessary" or "unwarranted." Aside from the explanation given for the proposed extensions to particular filing deadlines, the Petition does not include specific discussion of the Postal Service's administrative effort and expense expended to comply with the requirements of part 3050.

To consider if any particular rule in part 3050 imposes "unnecessary or unwarranted administrative effort and expense" on the Postal Service that would justify eliminating or modifying the content of a report, more specific information is needed. For instance, it would be helpful to know the following:

⁷ See, e.g., 2017 Report on Form 10-K at 70; National Trial Balance and Statement of Revenue and Expenses, September 2017, Excel file "Statement of Revenue and Expenses - Redacted, September, 2017 (FY 2017).xls," November 14, 2017, row 195 (September 2017 RES Excel file).

⁸ See, e.g., 2017 Report on Form 10-K at 45; September 2017 RES Excel file, rows 198-204 and 2105-2116.

- The data that must be collected to comply with the rule;
- The effort and expense incurred to collect the data required by the rule;
- Whether the data would be collected if the rule did not require reporting;
- The accessibility and availability of the data to the public, other than through the filing of the periodic report required by the rule;
- The applicable Postal Service data retention policy;
- Whether the report would be generated if the rule did not require reporting; and
- The effort and expense incurred to generate the report.

To consider the modification or elimination of any form requirement appearing in part 3050, it would be helpful to know if permitting the Postal Service to submit a particular report in a more “raw” form would reduce the administrative effort and expense while still preserving the content of the report. The part 3050 rules are designed to minimize administrative effort and expense expended by the Postal Service—few rules impose specific detailed form requirements. Instead, the rules focus on ensuring that the necessary substance of the required report is communicated in an understandable fashion. See, e.g., 39 C.F.R. § 3050.2 (requiring the identification and explanation of certain types of changes and corrections made to reports as well as the contents of supporting workpapers). The rules imposing certain format requirements aim to ensure that information will be reported in a fashion that is consistent and useful. See, e.g., *id.* § 3050.14 (aligning the format of the Postal Service’s Cost and Revenue Analysis report with the classification structure appearing in the Mail Classification Schedule). Given technological advances in transmitting electronic data since 2009, the Public Representative suggests that the Commission consider streamlining rules that appear to require duplicative submissions. See *id.* § 3050.60(c) (requiring hard copy form and electronic form submissions of the master list of publications and handbooks when changed); see also *id.* § 3050.40(d) (requiring two copies of OPM data).

Respectfully submitted,

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